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July 25, 2008

**HIGHLY CONFIDENTIAL – OUTSIDE TRIAL COUNSEL’S
EYES ONLY, PURSUANT TO LR 26.2**

BY E-FILE, E-MAIL, AND HAND DELIVERY

The Honorable Vincent J. Poppiti, Special Master
Blank Rome
1201 N. Market Street, Suite 800
Wilmington, DE 19801

Re: *Honeywell International Inc., et al. v. Apple Computer et al.*, C.A. No. 04-1338-JJF (consolidated)

Dear Special Master Poppiti:

This letter, on behalf of stayed customer-defendants Pentax/Hoya Corporation and Pentax of America, Inc. (collectively “Pentax/Hoya”), responds to Honeywell’s letter of July 18, 2008.

The parties understand each other’s positions. Honeywell wants (1) a declaration from Pentax/Hoya confirming the prior identification of products and module suppliers; (2) a declaration from Pentax/Hoya confirming non-use of the accused Optrex and Samsung SDI modules; and, (3) declarations from [REDACTED] (Pentax/Hoya’s suppliers) that the respective licenses cover all Pentax/Hoya activities.

Although Pentax/Hoya believes that it should be dismissed without having to provide any additional information, Pentax/Hoya is willing to provide a declaration with information in its possession, *i.e.*, (1) confirming the prior identification of products and module suppliers and (2) the non-use of the accused Optrex and Samsung SDI modules. However, Pentax/Hoya objects to (3) Honeywell’s demand that it provide declarations from [REDACTED].

REDACTED

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1. Pentax/Hoya Should Be Dismissed Without Having To Provide Any Additional Information

Honeywell asserts that Pentax/Hoya bears the burden of establishing that it is licensed. Under the circumstances surrounding this litigation, Pentax/Hoya should not have to show that it is licensed; rather Honeywell should be required to show why it can maintain the suit against Pentax/Hoya. This is not the typical case where a defendant asserts that it has a license as an affirmative defense. In this litigation, the customer defendants identified the manufacturers of the LCDs used in the products which Honeywell accused of infringement.¹ The manufacturers were then joined as parties to the litigation, and the manufacturers assumed responsibility for the case from the customer defendants. The litigation with respect to the customer defendants was then stayed based upon, *inter alia*, that the customer defendants did not have relevant information regarding the accused LCD modules.

Honeywell subsequently obtained discovery from and negotiated and executed settlements with several of the manufacturers. Importantly, all of Pentax/Hoya's LCD suppliers (manufacturers) have settled with Honeywell and/or are licensed under the patent-in-suit. Accordingly, having dismissed all of Pentax/Hoya's suppliers from the litigation, Honeywell should similarly dismiss Pentax/Hoya from the litigation because whatever dispute Honeywell had with Pentax/Hoya and its suppliers has now been resolved. Honeywell dismissed Pentax/Hoya's suppliers from suit. For whatever reasons Pentax/Hoya's suppliers were dismissed, Pentax/Hoya should be dismissed for the same reasons. Whatever was in dispute with respect to Pentax/Hoya has been resolved by the agreements and dismissals of Pentax/Hoya's suppliers.

Honeywell has no good faith basis to maintain the litigation against Pentax/Hoya where all of its suppliers have settled. Pentax/Hoya's suppliers, as well as other LCD manufacturers, were joined in the litigation because of the assertions made against Pentax/Hoya and the other customer defendants. Having dismissed all of Pentax/Hoya's suppliers from the litigation should be the end of the matter for Pentax/Hoya. The dispute over the accused products of Pentax/Hoya and Pentax/Hoya's suppliers has been resolved.

Thus, under the circumstances surrounding this litigation, it should be Honeywell, not Pentax/Hoya, who bears the burden of going forward. *See, e.g., Bourne v. Walt Disney Co.*, 68 F.3d 621, 631 (Fed. Cir. 1995) (holding that, when question is scope of license instead of the existence thereof in copyright matter, licensor bears burden of establishing that accused infringer is not licensed); *Buckley v. Airshield Corporation*, 116 F.Supp.2d 658, 668 (D. Md. 2000) (to meet burden of establishing infringement, plaintiff must "establish that Defendants acted outside the scope of the previous license..."). If Honeywell has basis for continuing the suit against Pentax/Hoya where all of its suppliers have been dismissed and/or are licensed, Honeywell

¹ Honeywell accused the Pentax OptioS4i and OptioS40 of infringement. Pentax/Hoya informed Honeywell that the LCDs used in these cameras were manufactured by [REDACTED]

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4. Conclusion

For the above reasons and those set forth in Pentax/Hoya's letter of July 18, 2008, Pentax/Hoya should be dismissed from this litigation.

Respectfully submitted,



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AAL

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